

## **REMARKS**

Reconsideration of the above identified application, in view of the following remarks, is respectfully requested.

### **I. Status of the Claims**

Claims 1-19 are pending in the application.

### **II. Rejections under 35 U.S.C. § 103(a)**

Claims 1, 2, 5-9 and 12-17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,539,106 to Schwartz in view of U.S. Patent No. 4,332,678 to Spiegl. Claims 3, 4, 10, 11, 18 and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Schwartz in view of Spiegl and further in view of U.S. Patent No. 5,811,012 to Tanabe et al.

The Applicants respectfully traverse the above rejections by stating that cited prior art does not provide the motivation to substitute the hardness detection system of Spiegl for the hardness sensors of Schwartz. Schwartz teaches a water conditioning system in which "[a]ll of the controls are water flow operated... [and n]o electrical controls... are needed." See Schwartz, column 3, lines 36-38. Additionally, Schwartz teaches that his system requires "no dependence on electricity to operate." See Schwartz, column 3, lines 19-20. However, Spiegl teaches that his hardness detectors actuate electric switches to operate and thus require electricity. See, Spiegl,

e.g. column 3, lines 38-41; lines 54-55; and column 5, lines 28-29. Thus, one of ordinary skill in the art would not be motivated to substitute Spiegl's electrical hardness detectors for Schwartz's non-electric hardness sensors.

Additionally, the Applicants respectfully state that a § 103(a) rejection is not proper if it is based upon a modification of a reference that destroys the intent, purpose or function of the invention disclosed in the reference. See, e.g., *In re Gordon*, 733 F.2d 900 (Fed. Cir. 1984). The intended function of Schwartz's invention is to provide "continuous soft-water service... [with] no dependence on electricity to operate." This intended function is destroyed if Spiegl's electrical hardness detectors are substituted for Schwartz's non-electric hardness sensors. Any disruption in electrical power causes Schwartz's system to malfunction by not sensing the change in hardness. When the change in hardness is not detected, the system does not know to switch between the expended tank and the recharged tank. Thus, the raw water is not properly softened.

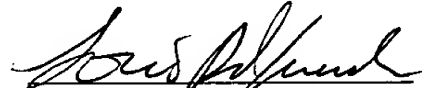
Thus, the Applicants state that the combination of Schwartz and Spiegl is improper and respectfully request the above rejections be withdrawn.

### **CONCLUSION**

Therefore, in view of the above remarks, it is respectfully requested that the application be reconsidered and that all pending claims be allowed and the case passed to issue.

If there are any other issues remaining which the Examiner believes could be resolved through either a Supplemental Response or an Examiner's Amendment, the Examiner is respectfully requested to contact the undersigned at the telephone number indicated below.

Respectfully submitted,



Louis J. DeJurdice

Reg. No. 47,522

Agent for Applicants

DARBY & DARBY, P.C.  
Post Office Box 5257  
New York, NY 10150-5257  
Phone (212) 527-7700